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T.R.A. DOCKET ROOM
December 9, 2004

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VIA HAND DELIVERY

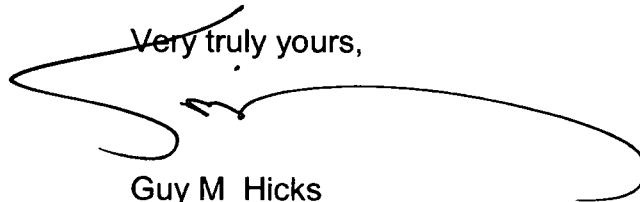
Hon. Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Complaint of XO Tennessee, Inc. Against BellSouth and Request for Expedited Ruling and for Interim Relief*
Docket No. 04-00306

Dear Chairman Miller:

Enclosed are the original and fourteen copies of BellSouth's *Request to Defer*. Copies of the enclosed are being provided to counsel of record.

Very truly yours,



Guy M Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Complaint of XO Tennessee, Inc. Against BellSouth and Request for Expedited Ruling and for Interim Relief*

Docket No. 04-00306

REQUEST TO DEFER

BellSouth Telecommunications, Inc. ("BellSouth") files this *Request to Defer* and respectfully shows the Tennessee Regulatory Authority ("Authority" or "TRA") as follows:

This matter is set on the Authority's December 13, 2004 Agenda to "consider complaint". BellSouth submits that this Complaint is not ripe for consideration for several reasons. First, this matter raises issues related to services that BellSouth submits are impacted by the *Triennial Review Order* ("TRO"), *USTA II* decision of the D.C. Circuit Court, the *Interim Rules Order* of the FCC and the *Final Rules* of the FCC. As the Authority is well aware, FCC Chairman Powell has indicated that final rules will be issued this month, and the matter has been placed officially on the FCC's December 15 agenda (attached). These rules, in all probability, will impact the issues parties have presented in this docket.¹ It would, therefore, be most efficient for the TRA to take up this matter at its next conference in order to have the benefit of the FCC's *Final Rules* decision.

¹ The issue of conversions of special access circuits to stand alone UNEs is currently before the FCC in its *Final Rules* proceeding, to be decided by December 15, 2004

Second, granting the relief sought by XO in this docket would establish a Tennessee precedent regarding implementation of the *TRO* and all the related legal decisions. In effect, the Authority's action would have the effect of (1) making the provisions of the *TRO* self-effectuating and (2) disregarding the language of XO's contract. That is, XO seeks the benefit of *TRO* changes ***without completing a change of law process*** and seeks a ruling that would affirm such provisions are self-effectuating. BellSouth may, in fact, ***agree*** that the ordinary change of law processes contained in CLEC contracts need not be utilized regarding *TRO*, *USTA II*, *Interim Rules Order* and *FCC Final Rules* changes. However, such an important decision will affect all CLECs and the Authority may find it best to consider establishing such a precedent after the FCC's *Final Rules* are announced this month. Most importantly, XO seeks an order permitting it to "cherry pick" ***one aspect*** of the *TRO* while avoiding the same self-effectuating impact of ***other*** *TRO* changes. In short, XO seeks to benefit from some *TRO* provisions while avoiding others.

Third, this docket involves the conversion of special access circuits to ***stand alone UNEs***. The Authority has not considered this issue.² For the Authority to have a full understanding of the issues presented here, BellSouth requests that it be allowed to submit written testimony prior to TRA deliberation.

² For example, the Authority has considered the issue of audits of converted special access circuits to ***EELs*** in *Enforcement of Interconnection Agreement between BellSouth Telecommunications, Inc and XO Tennessee, Inc.*, Docket No 02-01203, which is legally and contractually different than the issue presented here, which involves ***stand alone UNEs***.

For all these reasons, BellSouth respectfully asks the Authority to defer this matter to the next scheduled TRA Conference.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commission Meeting Agenda

A Public Notice of the Federal Communications
Commission
News Media Information (202) 418-0500
Fax-On-Demand (202) 418-2830
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

December 8, 2004

FCC TO HOLD OPEN COMMISSION MEETING **WEDNESDAY, DECEMBER 15, 2004**

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, December 15, 2004, which is scheduled to commence at 9:30 a.m. in Room TW-C305, at 445 12th Street, S W., Washington, D.C

<u>ITEM NO.</u>	<u>BUREAU</u>	<u>SUBJECT</u>
1	OFFICE OF ENGINEERING AND TECHNOLOGY	<p>TITLE: Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems (ET Docket No. 98-153).</p> <p>SUMMARY: The Commission will consider a Second Report and Order and Second Memorandum Opinion and Order concerning unlicensed operation. This item responds to proposals made in the previous Notice of Proposed Rulemaking and addresses the petitions for reconsideration filed in response to the previous Memorandum Opinion and Order in this proceeding.</p>
2	INTERNATIONAL	<p>TITLE: Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925-6425 MHz/3700-4200 MHz Bands and 14.0-14.5 GHz/11.7-12.2 GHz Bands (IB Docket No. 02-10)</p> <p>SUMMARY: The Commission will consider a Report and Order establishing licensing and service rules for Earth Stations on Vessels operating in the 5925-6425 MHz/3700-4200 MHz (C-Band) and 14.0-14.5/11.7-12.2 GHz (Ku-band) frequencies.</p>

*The summaries listed in this notice are intended for the use of the public attending open Commission meetings. Information not summarized may also be considered at such meetings. Consequently, these summaries should not be interpreted to limit the Commission's authority to consider any relevant information.

3

**WIRELESS TELE-
COMMUNICATIONS**

TITLE: Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services (WT Docket No. 03-103); Biennial Regulatory Review-Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service Mutually Exclusive Applications; and Application of Verizon Airfone Inc. for Renewal of 800 MHz Air-Ground Radiotelephone License, Call Sign KNKG804.

SUMMARY: The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking regarding commercial air-ground telecommunications service, Part 22 non-cellular Public Mobile Service rules, and general aviation air-ground radiotelephone service mutually exclusive applications. The Commission also will consider the Application of Verizon Airfone for renewal of 800 MHz Air-Ground Radiotelephone license call sign KNKG804.

4

**WIRELESS TELE-
COMMUNICATIONS**

TITLE: Amendment of the Commission's Rules to Facilitate the Use of Cellular Telephones and other Wireless Devices Aboard Airborne Aircraft.

SUMMARY: The Commission will consider a Notice of Proposed Rulemaking regarding changes to the rule prohibiting the airborne use of cellular telephones.

- 5** **WIRELINE
COMPETITION** **TITLE:** Rural Health Care Support Mechanism (WC Docket No. 02-60)
- SUMMARY:** The Commission will consider a Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking concerning modifications to the Commission's rules to improve the effectiveness of the rural health care universal service support mechanism.
-
- 6** **WIRELINE
COMPETITION** **TITLE:** Unbundled Access to Network Elements (WC Docket No. 04-313) and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338).
- SUMMARY:** The Commission will consider an Order on Remand concerning incumbent local exchange carriers' obligations to make elements of their networks available on an unbundled basis.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418-0500; TTY 1-888-835-5322. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events web page at www.fcc.gov/realaudio.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993-3100 or go to www.capitolconnection.gmu.edu

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc (202) 488-5300; Fax (202) 488-5563; TTY (202) 488-5562. These copies are available in paper format and alternative media, including large print/type, digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at FCC@BCPIWEB.com.

-FCC-

CERTIFICATE OF SERVICE


I hereby certify that on December 9, 2004, a copy of the foregoing document was served on the following, via the method indicated:

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- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

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A handwritten signature in black ink, appearing to read 'Dana Shaffer', is written over a horizontal line.